**Normandie on the Park, Inc. *and* Local 24, Hotel Employees and Restaurant Employees Union, AFL–CIO.** Case 7–CA–31981

February 26, 1992

## DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

Upon a charge filed by the Union on June 13, 1991, as subsequently amended on July 17 and October 2, 1991, on November 15, 1991, the General Counsel of the National Labor Relations Board issued an amended complaint against Normandie on the Park, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge, amended charges, and amended complaint, the Respondent has failed to file an answer.

On January 17, 1992, the General Counsel filed a Motion for Default Summary Judgment. On January 23, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Amended Complaint shall be deemed to be admitted true and may be so found by the Board." Further, the undisputed allegations in the Motion for Default Summary Judgment disclose that the Acting Regional Attorney, by letter dated December 5, 1991, notified the Respondent that unless an answer to the amended complaint was received by December 19, 1991, a Motion for Default Judgment would be filed. Although the Regional Director subsequently extended the date for filing an answer to January 8, 1992, no answer was filed by that date.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.

On the entire record, the Board makes the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent, a Michigan corporation, is engaged in the operation of a restaurant/bar at its office and place of business located at 6525 Second Street, Detroit, Michigan. During the year ending December 31, 1990, a representative period, the Respondent, in the course and conduct of its business operations, had gross revenues in excess of $500,000, and purchased and caused to be transported and delivered to its Detroit place of business alcoholic beverages valued in excess of $50,000 from the Michigan Liquor Control Commission, a state agency, which had received the alcoholic beverages directly from points located outside the State of Michigan. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

#### II. ALLEGED UNFAIR LABOR PRACTICES

##### A. *The Unit and the Union's Representative Status*

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All chefs, night cooks, broilers, cooks, utility employees, pantry employees, bartenders, waiters, waitresses, bus helpers, porters and cashiers employed by Respondent at its Detroit place of business; but excluding guards and supervisors as defined in the Act.

Since approximately 1957, and at all times material, the Union has been the exclusive collective-bargaining representative of the employees in the bargaining unit described above, and has been recognized by the Respondent as the exclusive collective-bargaining representative of the unit by virtue of it being signatory to a series of collective-bargaining agreements, the most recent of which was effective by its terms from March 1, 1988, to February 28, 1991.

At all times since approximately 1957, the Union, by virtue of Section 9(a) of the Act, has been and is now the exclusive representative of the employees employed by the Respondent in the above-described unit for purposes of collective bargaining with respect to rates of pay, wages, hours, and other terms and conditions of employment.

B. *The Violations*

On or about March 26, 1991, the Respondent, by its agent, Ernie Colangelo, threatened to close its restaurant if employees continued to support the Union as their collective-bargaining representative.

Since on or about April 5, 1991, the Respondent has unilaterally reduced the starting wage rates for new employees and changed the method by which employees are assigned to work stations.

Since on or about April 5, 1991, the Respondent has changed the past practice for scheduling full time work by scheduling newly hired employees for more hours per week than it schedules for more senior employees.

Since on or about December 13, 1990, the Respondent has unilaterally refused to make contributions on behalf of its employees to the Health and Welfare Fund and Pension Fund pursuant to the collective-bargaining agreement described above.

The Respondent engaged in the foregoing acts and conduct without prior notice to the Union and without affording the Union an opportunity to negotiate and bargain, and thereby violated Section 8(a)(1) and (5) of the Act.

CONCLUSIONS OF LAW

1. By threatening to close its restaurant if employees continued to support the Union, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By unilaterally reducing the starting wage rates for new employees and changing the method by which employees are assigned to work stations; by changing the past practice for scheduling full-time work by scheduling newly hired employees for more hours per week than it schedules for more senior employees; and by unilaterally refusing to make contributions on behalf of its employees to the Health and Welfare Fund and Pension Fund pursuant to the collective-bargaining agreement, the Respondent has engaged in unfair labor practices in violation of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent violated Section 8(a)(1) and (5) of the Act by unilaterally reducing the starting wage rates for new employees, and changing the past practice for scheduling full-time work by scheduling newly hired employees for more hours per week than it schedules more senior employees, we shall order the Respondent to make whole all unit employees adversely affected by these actions for losses incurred by virtue of these actions in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), with interest on any amount due paid in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[1]

Having further found that the Respondent violated Section 8(a)(1) and (5) of the Act by refusing to make contributions on behalf of its employees to the Health and Welfare Fund and Pension Fund, we shall order the Respondent to make whole its unit employees by making all contributions that have not been paid and that would have been paid but for the Respondent's unlawful discontinuance of the payments, including any interest applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from the Respondent's failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, supra, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Normandie on the Park, Inc., Detroit, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to close its restaurant if employees continue to support the Union as their collective-bargaining representative.

(b) Unilaterally reducing the starting wage rates for new employees and changing the method by which employees are assigned to work stations.

(c) Unilaterally changing the past practice for scheduling full-time work by scheduling newly hired employees for more hours per week than it schedules for more senior employees.

(d) Unilaterally refusing to make contributions on behalf of its employees to the Health and Welfare Fund and Pension Fund pursuant to the collective-bargaining agreement.

(e) In any like or related manner interfering with, restraining, or coercing employees in the ex-

[1] Interest shall be computed at the "short-term Federal rate" for the underpayment of taxes as set out in the 1986 amendment to 26 U.S.C. § 6621.

ercise of the rights guaranteed them by Section 7 of the Act, or refusing to bargain in good faith with the Union.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain in good faith with the Union as the exclusive collective-bargaining representative of the unit employees.

(b) Rescind, on the Union's request, the unilateral reductions in starting wage rates for new employees.

(c) Rescind, on the Union's request, the unilateral changes in the method of assigning employees to work stations and the past practice for scheduling full-time work.

(d) Make whole the unit employees for any loss of earnings and benefits suffered as a result of the Respondent's unilateral reductions and changes, in the manner set forth in the remedy section of this Decision and Order.

(e) Make whole the unit employees by making delinquent fringe benefit contributions to the appropriate fringe benefit funds on behalf of the unit employees and by reimbursing them for any expenses ensuing from the Respondent's unlawful refusal to make such payments, in the manner set forth in the remedy section of this Decision and Order.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, trust fund statements, and all other documents or records necessary to analyze the amount of fringe benefit payments or union dues due under the terms of this Order.

(g) Post at its facility in Detroit, Michigan, copies of the attached notice marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to close the restaurant if employees continue to support the Union as their collective-bargaining representative.

WE WILL NOT unilaterally reduce the starting wage rates for new employees and change the method by which employees are assigned to work stations.

WE WILL NOT unilaterally change the past practice for scheduling full-time work by scheduling newly hired employees for more hours per week than we schedule for more senior employees.

WE WILL NOT unilaterally refuse to make contributions on behalf of our unit employees to the Health and Welfare Fund and Pension Fund pursuant to the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act, or refuse to bargain in good faith with the Union.

WE WILL, on request, bargain in good faith with the Union as the exclusive collective-bargaining representative of our unit employees.

WE WILL rescind, on the Union's request, the unilateral reductions in starting wage rates for new employees.

WE WILL rescind, on the Union's request, the unilateral changes in the method of assigning employees to work stations and the past practice for scheduling full-time work.

WE WILL make whole our unit employees for any loss of earnings and benefits suffered as a result of our unilateral reductions and changes.

WE WILL make whole our unit employees by making delinquent fringe benefit contributions to the appropriate fringe benefit funds on behalf of the unit employees and by reimbursing them for any expenses ensuing from our unlawful refusal to make such payments.

NORMANDIE ON THE PARK, INC.